

Joint Standing Committee on Criminal Justice and Public Safety

PUBLIC 487 **An Act To Improve the Ability of the Department of Corrections**
EMERGENCY **To Share Information Related to Clients in Order To Improve**
 Treatment and Rehabilitative Services

LD 1861

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
GROSE	OTP-AM	H-751

Public Law 2005, chapter 487 allows the Department of Corrections to share with the Department of Health and Human Services information regarding juvenile clients who have been referred to the Department of Corrections but for whom no petition has been filed. The purpose of authorizing the sharing of this information is to improve the overall delivery of services to clients and to assist in the placement of preadjudicated juveniles as an alternative to detention. Without Public Law 2005, chapter 487 sharing of a juvenile's information at this stage could happen only with consent of a juvenile's parent or guardian or without consent if to a criminal justice agency only for purposes of the administration of juvenile criminal justice.

Public Law 2005, chapter 487 also authorizes the Department of Corrections to share confidential records of any client (juvenile or adult) with any other state agency engaged in statistical analysis for the purpose of improving delivery of services to persons who may become clients of more than one agency. The requesting agency must submit a plan to the Commissioner of Corrections, who must approve the plan and authorize the disclosure. The receiving agency may not disclose or distribute the records in any way that would refer to a client by name or number or could otherwise lead to the client's identification.

Public Law 2005, chapter 487 was enacted as an emergency measure effective March 13, 2006.

PUBLIC 488 **An Act To Amend the Laws Pertaining to the Department of**
EMERGENCY **Corrections**

LD 1886

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BLANCHETTE MAYO	OTP-AM	H-754

Public Law 2005, chapter 488 makes the following changes to the laws governing the Department of Corrections.

It clarifies the appeals process with respect to juvenile detention orders by specifying that an order may include discovery of new and significant information, which is consistent with the Bail Code.

It adds a requirement that, upon the request of a victim, the victim be notified when a prisoner is released to supervised release for sex offenders, a sentencing alternative in the Maine Revised Statutes, Title 17-A, section 1231 enacted by Public Law 1999, chapter 788, section 7.

It changes terminology to reflect the terminology used in the Sex Offender Registration and Notification Act of 1999, Title 34-A, chapter 15.

It eliminates the requirement that the Commissioner of Corrections notify the court of the initial place of confinement of a person committed to the Department of Corrections, since the commissioner notifies the sheriff now and the courts receive the same information from sheriffs.

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It adds correctional supervisors to those who may carry a concealed firearm with the permission of their employer.

It repeals the provision that requires the Commissioner of Corrections to promulgate rules for community services agreements.

It corrects an error in terminology in the provision governing boards of visitors.

It changes the title of the chief administrative officer of the Mountain View Youth Development Center from director to superintendent to make it identical to the title for the chief administrative officer of the Long Creek Youth Development Center.

It substitutes the term "juvenile community corrections officers" for "juvenile caseworkers" in several provisions.

It adds references to "supervised release for sex offenders" to a provision regarding probation and parole officers and intensive supervision program officers.

It creates an exception to a law that requires the elimination of all commissary-type facilities operated by state departments for the sale of food and food supplies to any person. Public Law 2005, chapter 488 allows the Department of Corrections to lawfully continue its long-time practice of operating a commissary for the sale of food to clients and employees in corrections facilities and clarifies that the chief administrative officer of a correctional or detention facility may, subject to the approval of the commissioner, purchase meals for or otherwise provide meals without charge to any facility employee who eats such meals within the scope of the employee's employment.

Public Law 2005, chapter 488 was enacted as an emergency measure effective March 13, 2006.

PUBLIC 502	An Act To Provide for the Issuance of a Bench Warrant upon Failure To Appear for a Hearing on Nonpayment of a County Jail Reimbursement Fee	LD 1709
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<u>Sponsor(s)</u> CROSTHWAITE RAYE	<u>Committee Report</u> OTP-AM	<u>Amendments Adopted</u> H-792
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Public Law 2005, chapter 502 specifies that if a person's default on payment of jail reimbursement fees is a violation of a condition of probation, that probation may be revoked. If a payment of the fee is not a condition of probation, the attorney for the county may file a motion to enforce payment of the fee. Public Law 2005, chapter 502 also provides for the issuance of a bench warrant in the event that a defendant does not appear after notice of a hearing on a motion to enforce payment of a jail reimbursement fee. Public Law 2005, chapter 502 eliminates ambiguity in the law and conforms the language regarding collection of jail reimbursement fees to the language regarding actions to collect unpaid fines and unpaid restitution.

PUBLIC 506 EMERGENCY	An Act To Improve the Prisoner Telephone System	LD 1884
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<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BLANCHETTE	OTP-AM	H-793

Public Law 2005, chapter 506 specifies that a prisoner who has been ordered to pay restitution or fines may not participate in an industry program or any other program administered by the Department of Corrections or a sheriff by which a prisoner is able to generate money unless the prisoner consents to pay at least 25% of the prisoner's gross weekly wages or other money generated to the victim or the court until such time as full restitution has been made or the fine is paid in full. Public Law 2005, chapter 506 also amends the payment of restitution provisions to specify that a prisoner's money that is subject to the 25% requirement applies to money "received" by the prisoner and not just to money that the prisoner "is able to generate" from any source, which means that a portion of gifts a prisoner receives may be applied to restitution and fines.

Public Law 2005, chapter 506 facilitates the use of prepaid minutes in the State's prisoner telephone system. Public Law 2005, chapter 506 also excludes from the 25% restitution and fine requirement any money received by the prisoner that is directly deposited into an account for the purpose of using the client telephone system.

Public Law 2005, chapter 506 further amends the provisions governing clients' money to specify that money received by a client be deposited into "the department's general client account" instead of "the facility's clients' account" or in the department's telephone call account. Money deposited in either account is credited to the client receiving it. Any money that is left in the telephone account at the time of a prisoner's discharge or transfer is then transferred into the department's general client account and that money is then subject to the 25% distribution for restitution and fines before distributed to the client. Finally, Public Law 2005, chapter 506 specifies the reimbursement process of client funds to family members when a client is deceased.

Public Law 2005, chapter 506 was enacted as an emergency measure effective March 24, 2006.

PUBLIC 507	An Act To Amend the Maine Criminal Code and Various Provisions Related to Juveniles	LD 1771
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<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
DIAMOND	OTP-AM MAJ ONTP MIN	S-472

Public Law 2005, chapter 507 was proposed by the Department of Corrections and makes changes to the Maine Juvenile Code, Criminal Code and Bail Code. The changes are as follows.

To eliminate confusion, Public Law 2005, chapter 507 substitutes in Title 15 and Titles 12 and 29-A concerning juveniles convicted of adult offenses the term "confinement" for the term "detention" when referring to a certain disposition. "Detention" refers to pre-adjudication or pre-conviction placement. "Confinement" refers to short term placement flowing a conviction or adjudication. "Commitment" refers to indeterminate correctional placement after adjudication for a juvenile offense.

Public Law 2005, chapter 507 requires that any credits for related time served in detention prior to sentencing be deducted from any order of confinement. Good time provisions do not apply to detention for juveniles.

Public Law 2005, chapter 507 specifies that persons who are arrested on a juvenile warrant but are more than 21 years of age at the time of the arrest are to be detained in adult facilities until they appear before the court.

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Public Law 2005, chapter 507 clarifies that a person over 21 must be detained with adults, and if a juvenile who is between 18 and 21 years of age is bound over, detention with adults will continue to occur, if ordered by the court.

Public Law 2005, chapter 507 clarifies that the bail process is not available for a person less than 18 years of age charged with an adult Title 12 or Title 29-A offense; however, juveniles are still subject to the rules of detention in the Juvenile Code.

Public Law 2005, chapter 507 applies the pre-petition confidentiality provisions to juvenile crimes relating to the operation of a motor vehicle while under the influence of alcohol or drugs. The confidentiality provision regarding a juvenile against whom a petition has not been filed applies also to those juveniles against whom a petition may be filed without a recommendation from a juvenile community corrections officer.

Public Law 2005, chapter 507 adds to the Juvenile Code a cross-reference to a Criminal Code restitution provision that was recently enacted regarding joint and several responsibility, as joint and several responsibility also applies to restitution in juvenile cases.

Public Law 2005, chapter 507 adds a cross-reference in the fine provision of the Maine Juvenile Code to a recently enacted juvenile crime law and clarifies that mandatory minimum fine provisions are not applicable to juveniles.

Public Law 2005, chapter 507 clarifies in Title 17-A that when the running of the period of probation is tolled due to pending probation violation proceedings, the conditions of probation continue to apply during the tolled period.

Public Law 2005, chapter 507 codifies in Title 17-A the Law Court's ruling that when there are consecutive sentences, detention time can only be counted once; this interpretation also applies to probation revocations.

PUBLIC 527 An Act To Implement Recommendations of the Criminal Law Advisory Commission

LD 2001

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-858 H-868 RINES

Public Law 2005, chapter 527 was submitted by the Criminal Law Advisory Commission.

Public Law 2005, chapter 527 amends the law regarding possession by prohibited persons of firearms or crossbows to:

1. Conform the terminology regarding the affirmative defense of insanity to that recently adopted in the Maine Revised Statutes, Title 17-A, sections 39 and 40;
2. Add a reference to parole, supervised release for sex offenders and administrative release; and
3. Change a cross-reference for the definition of "not criminally responsible by reason of insanity" and remove language no longer needed because of this change.

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Public Law 2005, chapter 527 eliminates the need to specify in the charge and prove at trial the value of an audio or visual recording of all or any part of an illegally obtained motion picture. This is consistent with theft involving a firearm or an explosive device in which pecuniary loss is not an element, and the absence of a pecuniary loss is not a defense.

Public Law 2005, chapter 527 amends the crime of failure to report a sexual assault of a person in custody to clarify that the crime's forbidden conduct element of failing to report the sexual assault to an appropriate criminal justice agency has no accompanying culpable mental state element. Public Law 2005, chapter 527 also provides an affirmative defense to prosecution under the section when the defendant knew that the crime of sexual assault had already been reported to an appropriate criminal justice agency by another mandated reporter.

Public Law 2005, chapter 527 amends the crime of possession of a firearm in a courthouse by:

1. Adding the word "unauthorized";
2. Clarifying that the crime's forbidden conduct element of possessing a firearm in a courthouse has no accompanying culpable mental state element;
3. Adding "corrections supervisor" to the list of persons to whom the prohibition does not apply;
4. Requiring that the firearm be unloaded if possessed under the evidence exception;
5. Clarifying that the proceeding in which the firearm is to be offered as evidence may be either civil or criminal;
6. Adding a new provision that specifies that possession of a valid permit to carry a concealed firearm is not a defense to this crime; and
7. Making a number of nonsubstantive changes to the language for purposes of clarity.

Public Law 2005, chapter 527 provides that the civil penalty for the sale and use of drug paraphernalia is \$300.

Public Law 2005, chapter 527 adds to the list of sentencing alternatives the sentencing alternative of supervised release for sex offenders as authorized by the Maine Revised Statutes, Title 17-A, chapter 50. Public Law 2005, chapter 527 also adds a reference to this alternative since a fine may be imposed in addition to a chapter 50 sentencing alternative. Further, Public Law 2005, chapter 527 repeals the option of a deferred disposition as authorized by Title 17-A, chapter 54-F, since it is not a sentencing alternative. Public Law 2005, chapter 527 makes clear that every natural person convicted of a crime must be sentenced to at least one of the listed sentencing alternatives. Depending upon which sentencing alternatives are used, a court may impose more than one and when mandated by the Legislature must do so.

Public Law 2005, chapter 527 adds to the list of sentencing alternatives applicable to an organization the sentencing alternative of a fine, suspended in whole or in part, with administrative release as authorized by Title 17-A, chapter 54-G. Public Law 2005, chapter 527 adds a reference to this alternative since a sanction authorized by section 1153 may be imposed in addition to a chapter 54-G sentencing alternative. Public Law 2005, chapter 527 makes clear that every organization convicted of a crime must be sentenced to at least one of the listed sentencing alternatives. Depending upon which sentencing alternatives are used, a court may impose more than one and when mandated by the Legislature must do so.

Public Law 2005, chapter 527 amends the law regarding notification of a defendant's release to:

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1. Conform the terminology regarding the affirmative defense of insanity to that recently adopted in Title 17-A, sections 39 and 40 pursuant to Public Law 2005, chapter 263, sections 5 to 7;
2. Replace the reference to "placed in institutional confinement" under both Title 15, section 103 and Title 15, section 104-A with "committed to the custody of the Commissioner of Health and Human Services";
3. Add references to supervised release for sex offenders pursuant to Title 17-A, chapter 50 and administrative release pursuant to Title 17-A, chapter 54-G; and
4. Add "release from commitment under Title 15, section 101-B" in provisions addressing releases that are unconditional.

Current law increasing the sentencing class one class higher for a Class B, C, D or E crime committed with the use of a dangerous weapon excludes from its application the crimes of aggravated assault and attempted aggravated assault. This exclusion was added because use of a dangerous weapon serves as a factual element of one form of the crime of aggravated assault. Public Law 2005, chapter 527 broadens the exclusion to include any crime that contains "use of a dangerous weapon" as a factual element.

Current law provides for the sentencing enhancement by one class if the defendant had 2 or more prior convictions of certain crimes, except for a conviction for stalking if the prior convictions have already served to enhance the sentencing class. Public Law 2005, chapter 527 broadens this exclusion to include any crime in which a prior conviction has already served to enhance the class of the crime.

Public Law 2005, chapter 527 clarifies that when 2 or more provisions in Title 17-A, section 1252 are pled and proved by the State to enhance the class of the crime these provisions may be applied successively as long as those to be made successive contain different class enhancement factors. For example, if the State pled and proved that the Class D crime of reckless conduct was committed with the use of a dangerous weapon and, at the time of its commission, the defendant had been convicted of 2 or more qualifying crimes, the class of the reckless conduct would be elevated successively from Class D to Class C and from Class C to Class B, because subsections 4 and 4-A constitute enhancement factors reflecting different public policy concerns.

Public Law 2005, chapter 527 removes the current exception for eligibility for deferred disposition, which is that the crime expressly provides that one or more punishment alternatives it authorizes may not be suspended. Removing this exception allows the flexibility in sentencing options now available under Title 17-A, section 1348-B, subsection 1 and recognizes the fact that the Legislature also recently added a mandatory minimum fine to the Maine Criminal Code crime for assault and to all drug crimes in Title 17-A, chapter 45.

Public Law 2005, chapter 527 removes that portion of the paragraph authorizing judicial fact-finding at the sentencing hearing and requires instead that "accompanied by sexual assault" be pleaded and proved beyond a reasonable doubt to the fact-finder at the trial. The change is required under both the United States Constitution and the Constitution of Maine because "accompanied by sexual assault" is a fact incident to attempted murder or murder that makes the person a "repeat sexual assault offender" who consequently is subject to a term of imprisonment for any term of years rather than a lesser definite term as specified under Title 17-A, section 1252, subsection 2. See Blakely v. Washington, 542 U.S. 296 (2004); State v. Schofield, 2005 ME 82, 876 A.2d 43.

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<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-863

Beginning April 15, 2006, Public Law 2005, chapter 541 authorizes county jail employees, except corrections officers or deputy sheriffs, who have a commission as a notary public to provide notary public services for inmates if the employees are authorized to do so by the sheriff. Inmates frequently require access to notary public services and unless county jail employees are allowed to perform them, there is no practical way for inmates to obtain such access. On February 28, 1989, “judicial officer or notary public” was substituted for “magistrate” in the statute, apparently in the mistaken belief that a notary public performed judicial functions. However, as of 1988 this was no longer true, and a notary public was restricted to performing only ministerial functions. Therefore, there is no legal impediment to or conflict of interest for a jail employee to also act a notary public for inmates.

Public Law 2005, chapter 541 is retroactive, thereby validating the authority to act as a notary to a jail employee who provided notary services for an inmate at any time since 1989. Due to ignorance of the law on the part of inmates and employees alike, since 1989, numerous county jail inmates have requested and been afforded notary public services from county jail employees, including notarizing documents like affidavits, wills, living wills, and powers of attorney and performing marriage ceremonies.

Public Law 2005, chapter 541 was enacted as an emergency measure effective April 5, 2006.

PUBLIC 545 An Act To Allow Law Enforcement Agencies To Maintain Sex Offender Websites for Public Use LD 1831

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
CURLEY	OTP-AM	H-867
SNOWE-MELLO		

Public Law 2005, chapter 545 clarifies that only the Department of Public Safety, State Bureau of Identification may maintain a state sex offender registry on the Internet but authorizes law enforcement agencies to maintain their own sex offender websites for internal use and for use by the public if certain conditions are met. Specifically, in order to make a sex offender website available to the public, a law enforcement agency must post on its website that the website is not the official state sex offender registry and that the law enforcement agency posting the website is solely responsible for the website's content. The law enforcement agency must also provide a link to the State Bureau of Identification's Internet sex offender registry; post information regarding only 10-year and lifetime registrants who are domiciled, reside, attend college or school or work within the posting law enforcement agency's jurisdiction; update the information on the website as frequently as possible, but no less than every 7 days; and prominently display the date and time of the most recent update.

PUBLIC 546 An Act To Strengthen Maine's Timber Theft Laws LD 1759

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
NUTTING J	OTP-AM	S-517

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Public Law 2005, chapter 546 specifies that, absent a written contract to the contrary, a person conducting a forest harvest operation shall provide the landowner with full payment for each truckload of harvested forest products transported to a handling or processing facility within 45 days of delivery. Public Law 2005, chapter 546 establishes a fine of not more than \$1,000 for the first violation, a fine of not more than \$2,000 for a 2nd violation within a 5-year period and a Class E crime if a person commits a violation 3 or more times within a 5-year period. Public Law 2005, chapter 546 also creates a restitution provision, which directs the court in accordance with the requirements of the Maine Revised Statutes, Title 17-A, chapter 54, when appropriate, to order restitution on the basis of an adequate factual foundation. The amount of restitution may be determined by using the measured volume of the harvested forest products as listed on the measurement tally sheet or stumpage sheet in accordance with Title 10, section 2364-A, subsection 2 and by the terms of the sales contract according to the measurement procedures set forth in Title 10, section 2363-A that are applicable to a sale of wood. Finally, Public Law 2005, chapter 546 directs the Commissioner of Conservation to report by March 1, 2008 to the joint standing committee of the Legislature having jurisdiction over criminal justice matters observations regarding the effectiveness of the new penalties in deterring timber theft.

PUBLIC 551 **An Act To Implement the Recommendations of the Attorney General's Working Group Regarding Sentencing Factors for Crimes against Persons Who Are Homeless** **LD 2046**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP MAJ	
	ONTP MIN	

Public Law 2005, chapter 551 implements the recommendations of the Attorney General's working group regarding the advisability of implementing aggravating sentencing factors for crimes against persons who are homeless, which was established pursuant to Public Law 2005, chapter 393. Public Law 2005, chapter 551 amends the purpose section of the general sentencing provisions of the Maine Criminal Code by adding homelessness to the list of factors, such as the age, religion and sexual orientation of a victim, that a court considers in determining the gravity of an offense in sentencing.

PUBLIC 571 **An Act To Amend the Rule-making Authority of the Commissioner of Public Safety Regarding the Construction, Installation, Maintenance and Inspection of Chimneys, Fireplaces, Vents and Solid Fuel Burning Appliances** **LD 1825**
EMERGENCY

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
THOMAS	OTP-AM	H-943

Public Law 2005, chapter 571 amends the Commissioner of Public Safety's rule-making authority regarding the construction, installation, maintenance and inspection of chimneys, fireplaces, vents and solid fuel burning appliances. Public Law 2005, chapter 571 repeals the current directive to the Commissioner of Public Safety to adopt the National Fire Protection Association Code #211, "The Standards for Chimneys, Fireplaces, Vents and Solid Fuel Burning Appliances," and replaces that with more general rule-making authority that directs the commissioner to adopt routine technical rules pertaining to the construction, installation, maintenance and inspection of chimneys, fireplaces, vents and solid fuel burning appliances. Public Law 2005, chapter 571 also authorizes the commissioner to adopt major substantive rules pertaining to the inspection and maintenance of chimneys, fireplaces, vents and solid fuel burning appliances upon the sale or transfer of property.

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Public Law 2005, chapter 571's amendment of the current rule-making authority is specifically to address the current regulatory requirement that Level II chimney inspections be conducted upon the sale or transfer of real estate pursuant to National Fire Protection Association Code #211. Public Law 2005, chapter 571 gives the Commissioner of Public Safety the ability to tailor rules to the needs of the State.

Public Law 2005, chapter 571 also adds a penalty provision that specifies that a person who violates a rule adopted pursuant to the Maine Revised Statutes, Title 25, section 2465 commits a civil violation for which a fine of not less than \$200 and not more than \$500 may be adjudged. This penalty does not apply to a rule requiring an annual chimney inspection for a single-family home.

Public Law 2005, chapter 571 was enacted as an emergency measure effective April 12, 2006.

PUBLIC 606 An Act To Safeguard Maine's Highways

LD 1906

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
CURLEY DIAMOND	OTP-AM	H-1041

Public Law 2005, chapter 606 makes the following changes to the motor vehicle statutes.

1. It amends the OUI law to be consistent with proposed changes in this law that create the distinct crimes of causing serious bodily injury or death while a driver's license is suspended or revoked.
2. It creates new crimes of causing serious bodily injury or death while driving with a suspended or revoked license. A person commits the crime if the person knowingly operates with a suspended or revoked license and in fact causes serious bodily injury or death. Causing injury in such a case is a Class C crime with penalties that include a possible 0-5 years of imprisonment and a mandatory 5-year license suspension. Causing death in such a case is a Class B crime with penalties that include a possible 0-10 years of imprisonment and a mandatory 10-year license suspension.
3. It expands the habitual offender statute by adding the offense of operating a motor vehicle at a speed that exceeds the maximum speed limit by 30 miles per hour or more to the list of 3 or more convictions or adjudications for distinct offenses within a 5-year period for which a person is an habitual offender.
4. It further expands the habitual offender statute by adding the accumulation of 10 or more moving violations within a 5-year period to the list of convictions or adjudications for distinct offenses within a 5-year period for which a person is an habitual offender.
5. It removes from the exceptions for which a person is not an habitual offender the case when all convictions or adjudications are based on operating after suspension when the license was originally suspended for failure to give or maintain proof of financial responsibility.
6. It removes from the convictions for offenses that may not be included under the habitual offender provision convictions for operating after suspension when the suspension is based upon failure to appear in court or pay a fine.
7. It amends the penalties for operating after habitual offender revocation and expands the crime to include persons who have one or more prior convictions for operating after habitual offender revocation or

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aggravated operating after habitual offender revocation and who then operate after the license is suspended or revoked. Mandatory penalties that cannot be suspended include the following.

- A. A person is guilty of a Class D crime if the person operates after habitual offender revocation and has not been convicted of operating after habitual offender revocation or for operating under the influence within the previous 10 years. If the person has no prior convictions, the minimum fine for this Class D crime is \$500 and the minimum term of imprisonment is 30 days.
 - B. A person is guilty of a Class C crime if the person operates after habitual offender revocation and has one conviction for operating after habitual offender revocation or for operating under the influence within the previous 10 years. If the person has one prior conviction, the minimum fine for this Class C crime is \$1,000 and the minimum term of imprisonment is 6 months.
 - C. A person is guilty of a Class C crime if the person operates after habitual offender revocation and has 2 convictions for operating after habitual offender revocation or for operating under the influence within the previous 10 years. If the person has 2 prior convictions, the minimum fine for this Class C crime is \$1,000 and the minimum term of imprisonment is 9 months plus a day.
 - D. A person is guilty of a Class C crime if the person operates after habitual offender revocation and has 3 or more convictions for operating after habitual offender revocation or for operating under the influence within the previous 10 years. If the person has 3 or more prior convictions, the minimum fine for this Class C crime is \$1,000 and the minimum term of imprisonment is 2 years.
8. It creates the new crime of aggravated operating after habitual offender revocation and imposes new penalties. A person is guilty of aggravated operating after habitual offender revocation if that person operates after habitual offender revocation and at the time of that violation also commits one or more of the following: operating under the influence, driving to endanger, eluding an officer, passing a roadblock and operating a motor vehicle at a speed that exceeds the maximum speed limit by 30 miles per hour or more. Mandatory penalties that cannot be suspended include the following.
- A. A person is guilty of a Class D crime if the person commits the crime of aggravated operating after habitual offender revocation. If the person has no prior convictions, the minimum fine for this Class D crime is \$500 and the minimum term of imprisonment is 6 months.
 - B. A person is guilty of a Class C crime if the person commits the crime of aggravated operating after habitual offender revocation and has one prior conviction for committing aggravated operating after habitual offender revocation, operating under the influence or operating after habitual offender revocation within the previous 10 years. If a person has one prior conviction, the minimum fine for this Class C crime is \$1,000 and the minimum term of imprisonment is one year.
 - C. A person is guilty of a Class C crime if the person commits the crime of aggravated operating after habitual offender and has 2 prior convictions for committing aggravated operating after habitual offender revocation, operating under the influence or operating after habitual offender revocation within the previous 10 years. If a person has 2 prior convictions, the minimum fine for this Class C crime is \$2,000 and the minimum term of imprisonment is 2 years.
 - D. A person is guilty of a Class C crime if the person commits the crime of aggravated operating after habitual offender and has 3 or more convictions for committing aggravated operating after habitual offender revocation, operating under the influence or operating after habitual offender revocation within the previous 10 years. If a person has 3 or more prior convictions, the minimum fine for this Class C crime is \$3,000 and the minimum term of imprisonment is 5 years.

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- 9 It directs the Secretary of State to take reasonable actions to confiscate suspended licenses.
10. It requests that the Maine Sheriff's Association by January 30, 2007 report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters regarding the impact these increased motor vehicle penalties have on the county jail population and to make any suggested changes, if necessary.

**PUBLIC 634 An Act To Enhance the Protection of Maine Families from
EMERGENCY Terrorism and Natural Disasters**

LD 2044

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	H-1066 DUPLESSIE S-575 S-651 STRIMLING

Public Law 2005, chapter 634 enacts a number of the interim recommendations of the Task Force to Study Maine's Homeland Security Needs, as amended by the Joint Standing Committee on Criminal Justice and Public Safety and the Legislature. Public Law 2005, chapter 634 does the following.

1. It assigns to the committee of the Legislature having jurisdiction over criminal justice and public safety matters the responsibility of reviewing the Maine Emergency Management Agency (MEMA) under the provisions of the State Government Evaluation Act.
2. It directs the Statewide Radio Network Board, which consists of the Chief Information Officer and agencies using the statewide radio and network system, to develop protocols and procedures for frequency coordination throughout the State during emergencies and to obtain memoranda of understanding from certain stakeholders. The Statewide Radio Network Board shall report to the Task Force to Study Maine's Homeland Security Needs on its progress by September 18, 2006. It also clarifies that the Chief Information Officer and other agencies using the statewide radio and network system may operate as a board to establish standards for statewide radio and network system operations.
3. Beginning July 1, 2007, it specifies, in regard to the rental income from the rental of facilities at Limestone, that, notwithstanding any other law, the Department of Administrative and Financial Services, Bureau of General Services must transfer 22.5% of the income to the Department of Defense, Veterans and Emergency Management, Disaster Assistance Relief, Other Special Revenue Funds account for disaster assistance. The total amount that may be transferred is capped at \$3,000,000. In addition, notwithstanding any other law and except when the Governor in the case of a declared emergency needs money for disaster relief, the Governor may transfer no more than 10% of the balance of rental income from facilities in Limestone. It also specifies that beginning July 1, 2007, part of the rental income collected be transferred to the Department of Defense, Veterans and Emergency Management for maintenance and repair of National Guard armories in the State.
4. It creates the Homeland Security Advisory Council to advise the Governor on the coordination of homeland security activities of state agencies and the most effective use of grant funds and makes the Director of MEMA chair of the council.
5. It directs the Department of Education to amend its written application for funding for school construction projects to include the question: "Do you plan to use your school as a public community shelter?" It also requires that in the case of a school construction project in which the school is expected to be used as a

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community shelter, the State Board of Education may approve only those projects designed to accommodate backup energy generators.

6. It requires the Director of the Maine Center for Disease Control and Prevention within the Department of Health and Human Services to coordinate with the Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency on the planning and expenditure of federal funds received by the center for homeland security or bioterrorism prevention. It also requires the advisor of the Homeland Security Advisory Council to report annually to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters on the use of those funds.
7. It requires that the Director of the Maine Emergency Management Agency be qualified by education, training or experience in managing emergencies and be appointed by the Governor upon recommendation by the Commissioner of Defense, Veterans and Emergency Management, subject to confirmation of the joint standing committee of the Legislature having jurisdiction over the Department of Public Safety and the Legislature. It also provides that the director shall represent the Governor on all matters pertaining to the comprehensive emergency management program and the disaster and emergency response of the State. It requires the director to develop and conduct an annual program of comprehensive public education, using all appropriate means of communication to educate and inform members of the public and public officials about emergency preparedness, response, recovery and mitigation. The program must incorporate the use of appropriate accessible formats to educate and inform individuals with disabilities, individuals who are elderly and non-English-speaking residents of Maine.
8. It requires the Director of MEMA to survey Maine communities to gather information on the types of emergency notification systems that are in place throughout the State, evacuation plans for nursing homes and other long-term care facilities, including home-based and community-based programs, and evacuation plans for individuals living independently in communities who due to age or disability require assistance to evacuate.
9. It directs the Director of the MEMA to coordinate with the Commissioner of Education to perform an assessment of the number of Maine public schools that have adopted an all-hazards approach to emergency preparedness and requires the director and the commissioner to coordinate their efforts for community outreach for all-hazards emergency planning.
10. It directs the Director of the Center for Disease Control and Prevention within the Department of Health and Human Services, in conjunction with health system stakeholders, to update its survey of emergency health system capacity in the State. It also specifies that the Director of the Center for Disease Control and Prevention, in coordination with the Director of MEMA and the Director of Maine Emergency Medical Services within the Department of Public Safety in consultation with health system stakeholders, including the Maine Primary Care Association, the Maine Hospital Association and other interested parties, shall develop recommendations to address Maine's acute medical and public health surge capacity.
11. It directs the Director of the Center for Disease Control and Prevention, in conjunction with stakeholders and other interested parties, to study the qualifications and duties of local health officers in Maine and develop recommendations for enhancing the role of local health officers in emergency preparedness plans.
12. It directs the Director of the Maine Center for Disease Control and Prevention to work with health care and emergency management stakeholders to distribute grant funds provided by the United States Department of Health and Human Services, Health Resources and Services Administration to ensure that the regional resource centers are provided with sufficient funding resources to improve health system preparedness, within the limits of the federal funds, in accordance with the documented local needs of the federally specified funding beneficiaries: emergency medical services, poison control centers, health clinics and

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hospitals in each region. The Maine Center for Disease Control and Prevention shall report to the task Force to Study Maine's Homeland Security Needs on the results of the federal Health Resources and Services Administration grant and contract with the regional resource centers and other health system providers and on proposed recommendations. The Maine Center for Disease Control and Prevention shall report the same to the joint standing committee of the Legislature having jurisdiction over health and human services matters and to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters. The Maine Center for Disease Control and Prevention shall also report annually, beginning January 15, 2007, to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters on the progress of the grantees on meeting the stated contractual deliverables.

13. It directs the Director of the MEMA to consult with the Public Utilities Commission to determine the feasibility of adding a disability indicator to the current E-9-1-1 system in Maine to allow individuals with disabilities and special health needs to choose to provide a 2-digit code identifying special assistance needs in an emergency.
14. It directs the Maine Center for Disease Control and Prevention to submit a report to the Task Force to Study Maine's Homeland Security Needs by September 18, 2006 detailing the number of health care workers, by profession, registered in the federal Emergency System for Advance Registration of Voluntary Health Professionals.

Public Law 2005, chapter 634 was enacted as an emergency measure effective May 9, 2006.

PUBLIC 655	An Act To Amend the Law Relating to the Crime of Visual Sexual Aggression against a Child	LD 1718
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<u>Sponsor(s)</u>	<u>Committee Report</u> OTP-AM	<u>Amendments Adopted</u> H-766 H-826 BLANCHETTE
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Public Law 2005, chapter 655 creates a new version of visual sexual aggression against a child that requires that, for the purpose of arousing or gratifying sexual desire, a person at least 18 years of age intentionally engages in visual surveillance, aided or unaided by mechanical or electronic equipment, of the uncovered breasts, buttocks, genitals, anus or pubic area of another person in a private place. The crime also provides that the victim is not the actor's spouse and has not in fact attained 14 years of age, and that the act is carried out under circumstances in which a reasonable person would expect to be safe from such visual surveillance. This new crime is a Class D crime, unless committed against a person who has not attained 12 years of age, in which case it is a Class C crime.

The crime of visual sexual aggression against a child falls within chapter 11 of the Maine Criminal Code, which means that a person convicted of the Class D version, as well as the Class C version of this crime, may be subject to the sentencing alternative of probation. This amendment also makes the person convicted of this prohibited conduct subject to the requirements of the Sex Offender Registration and Notification Act of 1999.

PUBLIC 660	An Act To Amend the Crime of Aggravated Criminal Mischief	LD 1789
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<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
NUTTING J	OTP-AM MAJ ONTP MIN	S-504

Public Law 2005, chapter 660 adds to the Class C crime of aggravated criminal mischief a new form. To satisfy this new form the State must prove beyond a reasonable doubt both that the actor intentionally damaged, destroyed or tampered with the property of another, having no reasonable ground to believe that the person had a right to do so, and that at the time of the actor's actions the actor's motive was to cause substantial harm to the health, safety, business, calling, career, financial condition, reputation or personal relationships of the person with the property interest or any other person. This list of harmful motives is modeled after the crime of theft by extortion in the Maine Revised Statutes, Title 17-A, section 355.

PUBLIC 661 An Act To Eliminate Administrative Preliminary Hearings for LD 1868 **Probationers**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
PLUMMER	OTP-AM	H-796 S-670 ROTUNDO

Public Law 2005, chapter 661 eliminates the administrative hearings presently conducted by the Department of Corrections to determine probable cause for a probation violation and instead requires probable cause hearings to be conducted by the courts within 5 days after arrest. Public Law 2005, chapter 661 also specifies that evidence presented to establish probable cause may include affidavits and other reliable hearsay evidence as permitted by the court.

Public Law 2005, chapter 661 is effective January 1, 2007.

PUBLIC 667 An Act To Extend the Corrections Alternatives Advisory LD 2016 **EMERGENCY Committee**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
BLANCHETTE DIAMOND	OTP-AM	H-859

Public Law 2005, chapter 667 amends Public Law 2005, chapter 386, Part J, which established the Corrections Alternatives Advisory Committee. Public Law 2005, chapter 667 extends the life of the advisory committee to December 15, 2006, expands its membership and authorizes additional meetings and a final report to the Legislature. The bill also authorizes the advisory committee to carry forward any remaining funds in order to support its continued work.

Public Law 2005, chapter 667 was enacted as an emergency measure effective May 30, 2006.

PUBLIC 671 An Act To Provide Protection for Victims of Domestic Violence LD 2116

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<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
STRIMLING SIMPSON		

Public Law 2005, chapter 671 specifies that, upon receiving information from a federal agency that through a criminal background check an individual subject to a protection from abuse order has illegally attempted to purchase a firearm, the Department of Public Safety shall share that information with the individual who is intended to be protected by the order and with another law enforcement agency with jurisdiction in the municipality in which that individual resides as quickly as practicable.

Public Law 2005, chapter 671 further specifies that the Department of Public Safety may accomplish the notification process by notifying another law enforcement agency within the county in which the individual intended to be protected by the protection from abuse order resides. When the department makes notification through such a law enforcement agency, that agency then must make reasonable effort to notify as quickly as practicable the individual intended to be protected by the protection from abuse order. If, when notifying another law enforcement agency, the department is informed by that agency that it cannot notify the individual intended to be protected by the protection from abuse order, the department must continue to make its own reasonable effort to notify that individual as quickly as practicable, and this may be accomplished through a different law enforcement agency within the county in which the individual resides.

PUBLIC 673 **An Act To Create Mandatory Minimum Sentences for Persons** **LD 1717**
Convicted of Certain Sex Offenses against Victims under 12 Years
of Age

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM MAJ	H-1058
	OTP-AM MIN	

Public Law 2005, chapter 673 amends the Maine Revised Statutes, Title 17-A, chapter 50, which deals with the supervised release of sex offenders, by specifying that supervised release is not discretionary but required for persons convicted of committing gross sexual assault against a person under 12 years of age. The period of supervised release commences on the date the person is released from confinement, runs for the duration of the person's life and must include the best available monitoring technology. Public Law 2005, chapter 673 specifies that if the court revokes a period of supervised release, the court shall require the person to serve time in prison under the custody of the Department of Corrections. This time in prison may equal all or part of the period of supervised release, without credit for time served on post-release supervision and without any limitations based on the prior term of imprisonment, as current law requires. The remaining portion of the period of supervised release that is not required to be served in prison remains in effect to be served after the person's release and again is subject to revocation, if warranted.

Public Law 2005, chapter 673 also specifies that if the State pleads and proves that the crime of gross sexual assault was committed against a person who had not yet attained 12 years of age, the court shall impose a definite term of imprisonment for any term of years. In determining the basic term of imprisonment as the first step in the sentencing process, pursuant to Title 17-A, section 1252-C, subsection 1, the court shall select a term of at least 20 years.

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PUBLIC 676 **An Act To Establish a Computer Crimes Unit within the Maine**
EMERGENCY **State Police Crime Laboratory**

LD 2028

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM	S-519 S-674 ROTUNDO

Public Law 2005, chapter 676 requires that 3/14 of the surcharge collected and deposited in the Government Operations Surcharge Fund be paid to the Maine Criminal Justice Academy and 1/14 of the surcharge collected and deposited in the Government Operations Surcharge Fund be paid to the State Police to supplement current funds for computer crimes investigations. Public Law 2005, chapter 676 repeals the statute that established the Maine Computer Crimes Task Force and appropriates funds for the creation of a new computer crimes unit to be housed within the Maine State Police Crime Laboratory, which is part of the State Police program. The computer crimes unit will consist of 6 full-time positions, 4 of which already exist and 2 that are new. The computer crimes unit will continue the work of the Maine Computer Crimes Task Force by working collaboratively with the Department of the Attorney General and local law enforcement agencies for the purposes of investigation and assisting all law enforcement agencies in crimes involving computers.

Public Law 2005, chapter 676 was enacted as an emergency measure effective June 1, 2006.

PUBLIC 681 **An Act To Require a Criminal Background Check for the Initial**
 Licensure of Emergency Medical Services Personnel

LD 1018

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
SYKES	OTP-AM MAJ OTP-AM MIN	H-472

Public Law 2005, chapter 681 specifies that a criminal background check is required only for an applicant for initial licensure as an emergency medical services (EMS) person. For purposes of EMS licensing until now, pursuant to board policy a person was required to renew a background check every 3 years. Public Law 2005, chapter 681 supersedes this board-adopted licensing requirement. Public Law 2005, chapter 681 also clarifies what is intended by a criminal history record check and conforms the language and the process to other statutes regarding the use of criminal history record information for employment or licensing purposes. In order to ensure that all licensed emergency medical services providers are subject to a criminal history record check, Public Law 2005, chapter 681 also specifies that those persons who already have a license to provide emergency medical services but never had a criminal history record check must submit to a check at the time they apply for license renewal.

PUBLIC 684 **An Act Relating to the Handling of Firearms Confiscated by Law**
 Enforcement Officers Pursuant to a Court Order

LD 2118

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
MILLS J		S-695 DIAMOND

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Public Law 2005, chapter 684 directs the Maine Criminal Justice Academy to provide training for municipal, county and state law enforcement officers regarding the proper handling, storage, safekeeping and return of firearms and firearm accessories received pursuant to a protection from abuse order.

Public Law 2005, chapter 684 provides that in developing materials for training in domestic violence issues, the Maine Criminal Justice Academy may consult with a statewide organization involved in advocacy for victims of domestic violence and with an organization having statewide membership representing the interests of firearms owners.

Public Law 2005, chapter 684 also provides that a law enforcement officer who receives custody of a firearm pursuant to a protection from abuse order shall exercise reasonable care to avoid loss, damage or reduction in value of such firearm and may not permanently mark the firearm or fire the firearm unless there is reasonable suspicion that the firearm has been used in the commission of a crime. Any liability for damage or reduction in value to such a firearm is governed by the Maine Tort Claims Act.

Public Law 2005, chapter 684 is effective January 1, 2008.

RESOLVE 132 Resolve, Creating a Forensic Board To Manage the Release of Certain Sex Offenders

LD 1721

Sponsor(s)

Committee Report
OTP

Amendments Adopted

Resolve 2005, chapter 132 directs the Department of Corrections, in cooperation with the Department of Health and Human Services, the judiciary branch and other interested parties, to develop a plan to create a forensic board to periodically review the safety of releasing persons convicted of certain sex offenses after those persons have served at least a minimum number of years of imprisonment. The Department of Corrections will recommend persons to serve on the forensic board and will recommend processes for the board to employ, including the use of recognized risk assessment tools and other measurements and standards, to determine whether a person is appropriately released and under what conditions or to determine that the person must continue to remain incarcerated until the next forensic review. In addition to making recommendations regarding the development of a forensic board, the Department of Corrections must identify the types of treatment that persons convicted of sex offenses are receiving while incarcerated and any data measuring the success and failure of such treatments. Resolve 2005, chapter 132 directs the Department of Corrections to report its findings and recommendations, including proposed legislation to implement a forensic board, to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters by December 30, 2006.